

AMENDED IN ASSEMBLY APRIL 29, 2003

AMENDED IN ASSEMBLY APRIL 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1433**

**Introduced by Assembly Member Spitzer**

**(Coauthors: Assembly Members Aghazarian, Bates, Benoit,  
Chavez, Cogdill, Cox, Dutton, Harman, Maze, Nakanishi,  
Pacheco, and Strickland)**

**(Coauthors: Senators Aanestad, Johnson, and Oller)**

February 21, 2003

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An act to amend Section 76 of the Penal Code, relating to criminal threats.

LEGISLATIVE COUNSEL'S DIGEST

AB 1433, as amended, Spitzer. Criminal law: public officials: threats.

Under existing law, every person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, or the staff or immediate family, as defined, of any of these persons, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of a public offense.

This bill would include the immediate family of the staff of the specified persons within the protections afforded by these provisions.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

~~Existing law defines “threat” for these purposes as certain statements, conduct, or statements and conduct made as specified so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.~~

~~This bill would require instead that the statements, conduct, or both be made under circumstances that would cause a reasonable person targeted by the threat to fear for his or her safety or the safety of his or her immediate family. The bill would specify that proof of this crime does not require evidence of actual fear.~~

~~By eliminating the need for a prosecutor to prove fear, this bill would expand the scope of a crime, thereby imposing a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 76 of the Penal Code is amended to read:
- 2 76. (a) Every person who knowingly and willingly threatens
- 3 the life of, or threatens serious bodily harm to, any elected public
- 4 official, county public defender, county clerk, exempt appointee
- 5 of the Governor, judge, or Deputy Commissioner of the Board of
- 6 Prison Terms, or the staff, immediate family, or immediate family
- 7 of the staff of any elected public official, county public defender,
- 8 county clerk, exempt appointee of the Governor, judge, or Deputy
- 9 Commissioner of the Board of Prison Terms, with the specific
- 10 intent that the statement is to be taken as a threat, and the apparent
- 11 ability to carry out that threat by any means, is guilty of a public
- 12 offense, punishable as follows:
- 13 (1) Upon a first conviction, the offense is punishable by a fine
- 14 not exceeding five thousand dollars (\$5,000), or by imprisonment



1 in the state prison, or in a county jail not exceeding one year, or by  
2 both that fine and imprisonment.

3 (2) If the person has been convicted previously of violating this  
4 section, the previous conviction shall be charged in the accusatory  
5 pleading, and if the previous conviction is found to be true by the  
6 jury upon a jury trial, or by the court upon a court trial, or is  
7 admitted by the defendant, the offense is punishable by  
8 imprisonment in the state prison.

9 (b) Any law enforcement agency that has knowledge of a  
10 violation of this section involving a constitutional officer of the  
11 state, a Member of the Legislature, or a member of the judiciary  
12 shall immediately report that information to the Department of the  
13 California Highway Patrol.

14 (c) For purposes of this section, the following definitions shall  
15 apply:

16 (1) “Apparent ability to carry out that threat” includes the  
17 ability to fulfill the threat at some future date when the person  
18 making the threat is an incarcerated prisoner with a stated release  
19 date.

20 (2) “Serious bodily harm” includes serious physical injury or  
21 serious traumatic condition.

22 (3) “Immediate family” means a spouse, parent, or child, or  
23 anyone who has regularly resided in the household for the past six  
24 months.

25 (4) “Staff of a judge” means court officers and employees,  
26 including commissioners, referees, and retired judges sitting on  
27 assignment.

28 (5) “Threat” means a verbal or written threat or a threat  
29 implied by a pattern of conduct or a combination of verbal or  
30 written statements and conduct made with *the intent and* the  
31 apparent ability to carry out the threat ~~under circumstances that~~  
32 ~~would cause a reasonable person targeted by the threat to so as to~~  
33 ~~cause the person who is the target of the threat to reasonably fear~~  
34 ~~for his or her safety or the safety of his or her immediate family;~~  
35 ~~and with the intent to cause that fear. Proof of this crime does not~~  
36 ~~require evidence of actual fear.~~

37 (d) As for threats against staff or immediate family of staff, the  
38 threat must relate directly to the official duties of the staff of the  
39 elected public official, county public defender, county clerk,  
40 exempt appointee of the Governor, judge, or Deputy

1 Commissioner of the Board of Prison Terms in order to constitute  
2 a public offense under this section.

3 (e) A threat must relate directly to the official duties of a  
4 Deputy Commissioner of the Board of Prison Terms in order to  
5 constitute a public offense under this section.

6 SEC. 2. No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution because  
8 the only costs that may be incurred by a local agency or school  
9 district will be incurred because this act creates a new crime or  
10 infraction, eliminates a crime or infraction, or changes the penalty  
11 for a crime or infraction, within the meaning of Section 17556 of  
12 the Government Code, or changes the definition of a crime within  
13 the meaning of Section 6 of Article XIII B of the California  
14 Constitution.

